INDEX

OF

PRINCIPAL MATTERS.

ACT.

PAGE.

1. Where the tenor of the private act is specially set out in the recognitive act, the production of the primordial title, or original act is dispensed with. *Maillan* vs. *Perron et ux.*, 138

AGENT AND PRINCIPAL.

1. The agent is allowed to prove his agency, and that he sold the goods to the defendant for and on account of his principal, even when the latter was unknown at the time to the person buying.....*Brewster et al.* vs. *Saul*, 296

2. The principal may always institute suit on a contract made by his agent, in relation to his affairs, and hold the party liable..... *ib.*

3. Where goods are sold and delivered to an agent for an unknown principal, the latter is suable when he is discovered..... *ib.*

4. The owners of steam-boats are only liable for the delinquency and illegal acts of their captains and agents which they might, have prevented and failed to do so.....*Strawbridge* vs. *Turner & Woodruff et al.*, 539

5. The liability of principals for the acts of their agents, is not governed by the commercial law, but by the provisions of the *Louisiana* and *Civil Codes*..... *ib.*

AMENDMENT.

1. Where the plaintiff mistakes a part of the name of the defendant, he can amend and correct it by giving the true name, even after the original petition has been served.....*Brewster et al.* vs. *Saul*, 296

2. In a suit for the annulment of a will and partition of the estate, a supplemental petition, stating part of the property of the estate has been conveyed to one of the heirs, as a disguised donation, and praying that it

PAGE.

be brought into partition, will be received as an amendment and an additional component part of the original petition.

M'Caleb et al. vs. *M'Caleb*, 459

APPEAL.

1. When the plaintiff's demand exceeds three hundred dollars, his appeal lies against all the appellees who had judgment in their favor, even those whose claims are under three hundred dollars.....*Hart* vs. *Lodwick*, 164

2. Where there are several opposing claimants to the plaintiff, whose demands were severally and separately passed upon by the judgment of the inferior court, none of them can be heard on the appeal, but such as are actually, appellants from the court *a qua*.. .....*Abat* vs. *Nartigue et al.* 188

3. The defendant will not be allowed an appeal from an interlocutory order or decree, in order to avoid an appeal from the final judgment which may be rendered against him, because he may not be able to give security and procure a suspensive appeal....*Gravier's Curator* vs. *Caraby's Executor*, 202

4. Security must be given in every case according to law, to procure a suspensive appeal, although it be a constitutional right..... *ib.*

5. The transcript of the record may be filed within three judicial days after the return day of the appeal.....*Winter* vs. *Palfrey*, 205

6. Within the three judicial days of grace the appellant may obtain further time on showing cause. But, at the expiration of the three days, the appellee may obtain a certificate from the clerk that the appeal has not been prosecuted, and have execution on the judgment below, or procure a dismissal of the appeal on filing the transcript. He is not bound to answer after the expiration of the three days' grace..... *ib.*

7. The rule that, when an act is to be done within a given time it may be done afterwards, if nothing occurs to prevent it, does not apply to the case of filing a transcript of the record of appeal..... *ib.*

8. Where a judgment is rendered against two persons on different grounds and interests, and only one appeals, the appellee cannot have the judgment amended on the appeal, so as to affect the interest or increase the amount of the other.....*Crocker* vs. *Williamson et al.*, 216

9. The original debtor is not before the court on appeal, when his vendee the third possessor alone has appealed, and his interests cannot be affected by any alteration in the judgment as respects him without making him a party..... *ib.*

PAGE.

10. The appellee must be cited to the *next term* after granting an appeal, if there is sufficient time after allowing him the same delay which is granted to defendants in ordinary cases.....*Petit et al.* vs. *Drane*, 218

11. So, where the appellees reside in New-Orleans and an appeal was granted on the 22d January, and made returnable to the first Monday in March, following: *Held*, to be illegal and the appeal was dismissed. It should have been made returnable to February being the *next* term, and the appellees cited accordingly..... *ib.*

12. The law does not require that the appellee be cited to the first Monday, nor to any particular day of a term, but only to the next term after allowing the ordinary legal delay..... *ib.*

13. So, if an appeal be made returnable to the second term when there was time to have cited the appellee to the first term after it was allowed, it will be dismissed..... *ib.*

14. An appeal is not required to be made returnable to the fist Monday in the month or *term*, but may be made returnable to any day of the *next* term or month after it is granted, if there be time for the legal delay.
Arcenaux vs. *Jourdan et al*, 310

15 In the late Superior Court of the territory, the first Monday in each month or term, was the return day..... *ib.*

16. An appeal does not lie from an interlocutory judgment of the District Court, making absolute a rule taken on the appellant to show cause why the deliberations of a family meeting, convoked under the authority of the District Court, should not be homologated. Such judgment does not work an irreparable injury.....*Freret et al.* vs. *Marigny*, 502

17. When the appellant brings up his case without furnishing any legal means by which it can be examined on its merits, it will be dismissed.
Garritson vs. *His Creditors*, 518

18. The Code of Practice, article 583, requires the appeal to be made returnable to the next term of the Supreme Court after it is taken.
Rodney et al vs. *Dixon*, 531

19. So, an appeal granted the 30th March and citation served the next day, which was made returnable to the *first* Monday in May, was dismissed. It should have been taken to the *next* or April term..... *ib.*

ATTACHMENT.

1. The creditor who obtains a judgment in attachment, has the right to cause so much of the property attached to be sold, as will satisfy his judg-

PAGE.

ment. No other creditor has a right to interfere between him and their common debtor, without showing at least an equal or better right.
Garland & Osborn vs. *Grinnell et al.*, 57

2. An attaching creditor of the same common debtor, whose suit is not decided, and his demand still *sub judice*, cannot intervene and impede the execution of the judgment creditor, and require the funds attached in the two cases, to be equally distributed between them. ..... *ib.*

3. In relation to legal proceedings against debtors, not known to be insolvent, no distinction exists between suits prosecuted in the ordinary way, and by attachment. An intervention of other attaching creditors, before or after judgment, will be dismissed..... *ib.*

4. Where claimants are in possession of property attached, it lies on the attaching creditor to show title in the defendant.... . *Thayer* vs. *Page et al.*, 135

5. The attaching creditor is not bound to show, that the property attached actually belongs to his debtor, in order to repel the claim of an intervening party. It is sufficient to show that is does not belong to the claimants.
Slocomb vs. *Breedlove et al.*, 143

6. Slaves inherited by the wife in Mississippi, where the common law prevails, and according to the principles of which they become the property of the husband, are liable for his debts, and when brought into this state, may be attached the moment they arrive, or on their passage through, and sold to pay his debts..... *ib.*

7. The plaintiff in attachment will recover from the garnishees whatever sum is shown to be in their hands, belonging to the defendant at the time the attachment is levied.....*Erskine et al.* vs. *Cole et al.*, 270

8. Where the notes or debt sued on *are not due* at the inception of suit, an attachment will not lie on an affidavit, in which the plaintiff only swears to the existence of his debt, *and that the defendant has left the state never again to return*.....*Millaudon* vs. *Foucher*, 582

9. The act of 1808, amendatory of the articles 242-3-4 of the Code of Practice, requires in all cases where the *debt is not due*, the further averment under oath, that the defendant is about to remove his property out of the state before said debts become due, in order to obtain a writ of attachment..... *ib.*

10. An attachment may legally issue against the property of an absconding debtor, who leaves the state never to return, for debts that are due, against any property of his, within the jurisdiction of the court that issues it.....*Same parties*, 586

PAGE.

ATTORNEY OF ABSENT HEIRS.

1. The fee of the counsel for absent heirs will not be allowed and paid out of the mass of the succession, but should be charged to the portion of the absent heirs.....*Aubry et al.* vs. *Cujus, Executor, &c.* 43

ATTORNEY IN FACT.

1. A sale of immoveable property, followed by tradition, by a person styling himself the attorney in fact of the owner, but whose power of attorney is not produced, is only defective for want of evidence of his authority and not a nullity of form resulting from his legal incapacity. If he had stated himself to be the tutor or curator of the owner, the sale would be null for defect of form, as the purchaser would be considered as having purchased in bad faith from a person legally incapable of selling.

Bedford vs. *Urquhart et al.*, 241

2. So, where the purchaser was in possession for more than twenty years, under a conveyance executed by a person styling himself attorney in fact, without evidence of the agency, it was held that this furnished a legal presumption of agency..... *ib.*

ATTORNEY AT LAW.

1. Where a corporation, by a vote of its directors, appoints an attorney at law to manage its legal business, with a stated annual salary, and he accepts the office, the contract is binding on both parties for the period of one year, when there is no provision authorising either party to retract at will.

Orphan Asylum vs. *Mississippi Marine Insurance Co.*, 181

2. So, where an attorney at law was appointed the attorney of the insurance office of the defendants, with an annual salary of five hundred dollars, and was dismissed by the board of directors at the end of two and a half months: *Held*, that he is entitled to recover his salary for the whole year..... *ib.*

3. The statutes of 1809 and 1826, authorising summary proceedings against counsellors and attorneys at law, who refuse to pay over money collected by them for their client, do not entitle them to the intervention of a jury.....*West's Syndic* vs. *Carleton and Lockett*, 253

4. Attorneys at law, collecting money due to an insolvent estate, cannot retain their fee, but are required to pay the money over to the syndic, and have their claim for fees placed on the tableau, and its payment ordered in the general distribution..... *ib.*

PAGE.

BAIL.

1. Where judgment is rendered against a debtor, who is returned not found on a *fieri facias* and *capias ad satisfaciendum*, and the bail fails to produce him when called on, judgment will be entered against the bail for amount of the debt on motion, after ten days' notice in writing, and on the exhibition of the return of *not found*, on said writs.

Hudson vs. *Perry et al.*, 121

2. It does not follow that when the principal debtor leaves the state without the leave of the court, the penalty of the bail bond attaches absolutely. The surety has still the right to surrender him at any time before judgment against himself..... *ib.*

3. The principal obligation assumed by the surety in a bail bond, is to pay the judgment or surrender the debtor in execution..... *ib.*

4. The neglect or refusal of the surety to surrender the debtor in execution, is to be taken as *primâ facie* evidence that the latter has departed from the state and the bail thereby forfeited..... *ib.*

5. But the bail or surety has the right to discharge himself by a surrender of the debtor until final judgment is entered, and the debtor is considered in law as in the friendly custody of his surety, who, in case of escape, has at any time a right to arrest him by the aid of legal process..... *ib.*

6. The law authorises the creditor to arrest his debtor and hold him to bail, when he is about to depart from the state, even for a short time, when he leaves no property behind. It is not sufficient that he has settled and commenced permanent business in the state, to exempt him.

Henshaw vs. *Ladd*, 512

BANK.

1. A bank or other institution taking a security bond from its cashier or other officer, cannot be compelled to cancel and surrender it to the maker, on the resignation and settlement of his accounts, even when they are found correct, and the effects, money, and all belonging to the office are delivered over to his successor.....*Clague* vs. *City Bank*, 48

2. The bank may hold the security bond of its cashier after his resignation and the settlement of his accounts, as an indemnity, should it afterwards be discovered that his conduct, while in office, had occasioned injury to the institution..... *ib.*

PAGE.

3. The prescription of three years, elapsing after his resignation, does not extinguish the obligation of the cashier's bond; and until it is prescribed against, the bank may hold the bond as an indemnity. *Clague* vs. *City Bank*, 48

BILLS, NOTES AND CHECKS.

1. The owner of a check payable to bearer, on a Bank in New-Orleans, at sight, for six hundred and fifty dollars, having lost it by accident, and it was sold at St. Louis, fifteen hundred miles from the place of payment, twenty-five days after date, by a passenger in a steam-boat, to a merchant who went from New-Orleans, for its full value in goods and money; and the latter sold it to the plaintiffs at five per cent. discount, who sued the drawers: *Held*, that the circumstances under which the check came into the possession of the plaintiffs, were so suspicious, that a person of ordinary prudence ought to have hesitated and examined further before buying; and that no recovery can be had on the check, under the circumstances.

Vairin & Reel vs. *Hobson & Co.* 50

2. The plaintiffs, as holders, sue the maker and endorser of a promissory note: intervenors claim the note and allege, that it was the property of their ancestor, from whom it was stolen and came unfairly and without consideration, into the hands of the plaintiffs: *Held*, that when the testimony shows the note was not obtained in a fair course of trade, the holder is not considered *bonâ fide*, and cannot recover, as against the true owners.....*Dupeux* vs. *Troxler et al.* 92

3. Where the plaintiff is not the holder of the note sued on, but only his agent to deliver it to the maker, and knew the greater part of it had been paid, and took advantage of the absence of the maker, to obtain a judgment for the whole amount of the note, it would present the case of a judgment obtained through fraud, which might be avoided by direct action of nullity.

Garlick vs. *Reece*, 101

4. Where the right to sue is expressly denied to the holder of a promissory note, and the evidence does not show he received it from a person authorised to negotiate it; and when it is shown the note was not put in circulation until after a discharge was given by the original holder against it, under an assignment of property by the maker: *Held*, that the plaintiff cannot recover, but will be non-suited.....*Morrison* vs. *French*, 118

5. Where the acceptors of bills, on a condition to pay, when certain other bills placed in their hands, on the Mexican government, were collected, are sued on the acceptance: *Held*, that their liability depended on the fact of collection or the want of that diligence which, as faithful agents, they were bound to use: *held*, also, that when the evidence is such as to induce the

PAGE.

jury to believe the acceptors profited or were benefited by the use of the Mexican bills, or that they were collected or used by the agent of the defendants, for his own purpose, the verdict of the jury for the plaintiff will not be disturbed.....*Phillips* vs *Newton & Co.*, 150

6. Where the certificate of the notary states that notice was given to the endorser, by depositing it in the post office in this city, addressed to him there: *Held*, that the certificate *per se*, is clearly insufficient to prove notice, whatever may have been the domicil of the endorser, as no diligence is shown to find his domicil, or give him personal notice.

Porter et al. vs. *Boyle et al.* 170

7. Where the endorser resides in a faubourg of New-Orleans, notice of protest addressed to him and deposited in the city post office, is insufficient, without showing reasonable diligence to give him personal notice..... *ib.*

8. In a suit against endorsers of a promissory note given for the price of sugar sold by them as agents of the owner, and they show they were not bound to warrant the solvency of the purchaser, that the note was drawn to their order and endorsed in blank in the absence of the owner of the sugar, who took it in settlement, and the plaintiff is proved to be his agent: *Held*, that the endorsers are not liable.....*M'Donough* vs. *Goulé & Lambert*, 427

9. When the plaintiff's right to sue as the *bonâ fide* holder of an endorsed note is contested, and it is shown he became possessed of it as agent, and not in the usual course of trade, the endorsers may show that they endorsed for the principal, only as agents and without ultimate responsibility..... *ib.*

10. A person who endorsed notes at the instance of the transferor, to enable him to raise money, under an assurance that he was never to be liable, can avail himself of all the original equity against the subsequent holder, who took them after dishonor.

Whitwell, Bond & Co. vs. *Crehore, Ex'r., &c.* 540

11. Where an endorser endorsed notes for the accommodation of the holders, without receiving any consideration whatever, they cannot recover against him, nor their endorsee, who takes the note after its dishonor..... *ib.*

12. On due proof of the previous existence, loss and contents of a bill of exchange, the owner will recover its amount of the acceptor, on tendering security to indemnify the party against a second payment...*Miller* vs. *Webb* 516

13. Where A purchased one-fourth of a sugar plantation, and gave his notes in part payment to B and C, who remained joint owners of the other three-fourths, and when it was stipulated that B and C, the vendors, should

PAGE.

pay three-fourths of a mortgage which they had previously given on the premises to the bank, and A pay the other fourth, and B and C fail, so that the mortgaged premises are seized and sold to pay off the mortgage: *Held*, that no recovery can be had against A by the vendors on his notes, there being a failure of the consideration..*Kernion* vs. *Jumonville de Villier*, 547

14. A failure of the consideration of a promissory note, by the misconduct of the payee, without the fault of the maker, will discharge the latter from his obligation..... ..... *ib.*

15. The law requires *notice* of protest and non-payment of a promissory note, by the maker to be given to the endorsers at the time; and this notice must be alleged and proved by other evidence than the instrument of protest, or they will not be liable. .....*New-Orleans Savings Bank* vs. *Richards et al.*, 550

BROKERS.

1. Brokers are persons who negotiate for others, and as acknowledged agents have power to bind their principals.

Garcia et al vs. *Champomier et al.*, 519

2. But, persons stipulating to furnish flour at a fixed price for a certain commission and at a given day, will be considered as acting for themselves, and be personally responsible for their contracts... ..... *ib.*

COLLATION.

1. The law contemplates a perfect equality among co-heirs, and each one is bound to collate the advantages derived from the ancestor to whose succession he is called.....*Benoit* vs. *Benoit's heirs*, 229

2. Collation is an incident of the action of partition, but the obligation to collate cannot be destroyed by the fact that the ancestor had given away every thing in his lifetime, to one of his children to the exclusion of the others..... *ib.*

COMPENSATION

1. Compensation is of three kinds: legal, or by operation of law; compensation by way of exception, and by re-convention.

Blanchard vs. *Cole et al.*, 153

2. A debt due to persons individually as legatees, cannot be offered in compensation of a demand, due by them in their social capacity as a commercial firm.....*Ibid.*, 160

PAGE.

3. Compensation does not take place by operation of law between mutual claims, when one of them is unliquidated. *Blanchard* vs. *Cole et al.* 160

4. Garnishees cannot plead a demand against the defendant, in compensation, by way of exception to the plaintiff's right to recover..... *ib.*

5. The last purchaser of a plantation and slaves, may pay off previously existing debts, due by his vendors, and for which both he and the premises are liable, and be subrogated to the rights of these creditors, against his immediate vendor, and *compensate* such payment against the instalments as they become due.....*Mitchell* vs. *Johnson*, 525

CONFLICT OF LAWS.

1. The law of the domicil of a person inheriting, will govern in relation to the rights of the inheritance.....*Hicks, administrator*, vs. *Pope*, 554

2. So where a slave is inherited by the wife from her father, dying in Alabama, which if reduced to possession by her husband domiciled there, would have become his absolute property; but the domicil of the husband and wife being in Louisiana at the time, every thing falling by inheritance to the wife, becomes her separate property..... *ib.*

3. A curator appointed by the Court of Probates in this state, to administer a succession opened here, is without authority to administer property, or collect debts of the succession in another state, under this appointment.....*Schneller, curator, &c.* vs. *Vance*, 506

4. Citizens of this state, who are creditors of a succession, opened and administered here, have the moral and legal right to pursue property of the deceased, situated in another state, and exercise their rights and claims to it, according to the laws of that state, without being answerable to the curator or administrator here..... *ib.*

CONTINUANCE.

1. In applications for continuances of causes on the affidavit of the party, necessity and the general practice of the courts, admit suitors to swear for themselves. Counter-affidavits, as a general rule, cannot be received against an affidavit for a continuance.....*Maher et al.* vs. *Pulley*, 89

2. Exceptions to the general rule, prohibiting suitors from swearing *pro and con* for a continuance, ought to be disallowed, when the case has been repeatedly continued on the application of the party, or where suspicions arise that he is acting in bad faith..... *ib.*

PAGE

3. On a motion for a continuance on an affidavit, that the defendant could prove payment to a third person, who was to save him harmless: *Held*, that the continuance was properly refused, when the fact to be proved, would not have benefited the party applying for it.

Anselm vs. *Wilson*, 35

CONTRACT.

1. In reciprocal obligations, the party who does not perform his part of the engagement, cannot avail himself of any rights resulting to him from the contract: consequently, the other party may demand its rescission.

Mortee vs. *Roache's Syndic*, 81

2. In a reciprocal engagement, resulting from the sale of certain slaves, where the purchaser becomes bankrupt and surrenders the slaves with his other property, before payment of the price: he not being the absolute owner, his right is defeasible and the seller may have a rescission of the sale and compel the syndic to restore possession of the property..... *ib.*

3. The proprietor has a right to cancel the bargain he makes with the undertaker, even in case the work has already commenced, by paying the expense and labor already incurred, *and such damages* as the nature of the case may require.....*Dufour* vs. *Janin*, 147

4. But whether an undertaker be discharged for good cause or not, the contract is at an end. It ceases to be any longer the standard by which to estimate the value of the work actually done, but it may be given in evidence, to show the estimate the parties had made of the work to be done. *ib.*

5. In commutative contracts the defendants need not be put *in morâ* by a tender of the price, when it is shown they refused positively and declared they were unable to comply, when demanded to do so.

Garcia et al. vs. *Champomier et al.* 519

6. The defect in the mode of executing a contract does not annul it; it only gives to the other party the right of repudiating it, but which he may ratify and carry into execution, and thereby cure the defect.

Beal vs. *M'Kiernan*, 569

CORPORATION.

1. Where a corporation alienated a lot of ground subject to a ground rent of six per cent. per annum, on one thousand seven hundred and twenty-five dollars, payable quarterly, with condition that if two or more quarters remained unpaid, the alienor may enter: *Held*, that when the premises were transferred to a third person, who died without paying the arrearages

PAGE.

of rent, a sale by the syndics of his creditors, provoked by the corporation, divested his title thereto, so his heirs at law cannot recover.

Poultney's Heirs vs. *Barrett et al.* 441

2. When the right of entry, stipulated for by the corporation, becomes absolute by arrearages of rent accruing, and non-compliance with the conditions, the purchasers and vendees are mere tenants at will, as the corporation had a right to enter at any time..... *ib.*

COURT OF PROBATES.

1. The Court of Probates is *without* jurisdiction in a suit for a partition in which the defendant sets up title to the premises claimed to be divided, and the other party alleges the sale under which he claims, is fraudulent and simulated.....*M'Caleb et al* vs. *M'Caleb*, 459

2. The Court of Probates has authority to decide on the character and validity of sales of land and slaves, when the question arises collaterally in the examination of other matters in which it has jurisdiction..... *ib.*

3. So, where the natural son is alleged to have received donations *inter vivos*, disguised in the form of sales, which is required by the legitimate heirs to be brought into partition, the Court of Probates has jurisdiction to inquire collaterally into the character of the sales, to ascertain if this property is to be included in the partition of the whole estate..... *ib.*

CURATOR.

1. A curator appointed by the Court of Probates in this state, to administer a succession opened here, is without authority to administer property or collect debts of the estate in another state.

Schneller, curator, vs. *Vance*, 506

2. So, a creditor of an insolvent succession opened and administered here, who collects his debt out of the property of the deceased debtor situated in another state, is not required by law to refund to the curator here for an equal distribution among all the creditors..... *ib.*

DAMAGES.

1. Smart-money, or vindictive damages can only be given against the wrong-doer or offender, by way of punishment; but not against persons who are only consequentially liable on account of their relation to the wrong-doer, as the principal for the acts of his agents.

Keene vs. *Lizardi et al.*, 26

PAGE.

2. Where a party, whose execution is enjoined in the sheriff's hands, puts in an answer praying for a dissolution of the injunction, with damages, and for judgment against the principal and surety on the injunction bond, for the original debt, and which was dissolved with costs only, and the judgment acquiesced in: *Held*, that in another suit on the bond against the surety, the party can recover only such damages as he may prove independently of the interest and damages given by statute, when the former judgment is set up as a bar to the action. The question of damages will be left to the jury.....*Robertson et al.* vs. *Penn*, 61

3. When there is nothing in the record which would authorise the appellant to hope for any relief against a judgment rendered on his confession, it will be affirmed with ten per cent. damages.

M'Philin's Executor vs. *Gillise*, 180

DEBTOR AND CREDITOR.

1. No debtor is bound to pay a debt by portions, and no partial transfer can be made by a creditor, so as to be binding on the debtor, even when notice is given, except by the express consent of the latter.

Miller vs. *Brigot et al.* 533

2. The proprietor is not even obliged to accept a draft, or to pay it when his debt to the undertaker is due, which the latter draws on him for a *portion* of the last instalment, in favor of the material man. He may pay the whole sum to the undertaker, when it is due, unless suit is previously brought..... *ib.*

3. The debtor does not lose the benefit of the *term* stipulated for the payment of his debts, in regard to those not due, by simply leaving the state, when he leaves his property behind.....*Millaudon* vs. *Foucher*, 582

4. The provisions of the *Louisiana Code*, *article* 2049, require not merely an actual but declared insolvency or inability to pay debts, by either a voluntary or forced surrender of his property for the common benefit of creditors before the debtor loses the benefit of his term, and his debts *not due*, "taken and deemed to be due."..... *ib.*

5. Where a suit is instituted on notes or debts before they are due, judgment may well be rendered for as much of the whole debt as *is due* at the time the answer is filed.....*Millaudon* vs. *Foucher*, 587

6. Citizens of the state, who are creditors of a succession opened and aministered here, have the moral and legal right to pursue property of a succession, situated in another state from that in which it is opened, and exercise their rights and claims to it, according to the laws of that state, without being answerable to the curator or administrator here.

Schneller, Curator, &c. vs. *Vance*, 506

PAGE.

DEMAND.

5. Where the plaintiff's counsel employed a person to make a demand on the debtor, who presented the account, but did not tell the defendant it was his only business, or that he came to make a demand: *Held*, to be sufficient, when, from the circumstances attending this fact, the judge who tried the case was satisfied the amicable demand was proven.....*Ott* vs. *Mortee*, 409

DENIAL OF SIGNATURE.

1. The penalty which the law denounces, by depriving a party of every other means of defence, who expressly denies his signature, and it is proved by his adversary, is not incurred by the denial of his having made and executed the note sued on, or to which his signature is attached.

Stockton vs. *Truxton*, 224

2. Although an express denial of every allegation, is an express denial of each one; yet the plea of the general issue does not waive others, and an express and special denial of the signature is required before the party is debarred from every other plea, on proof being made of his signature..... *ib.*

DOMICIL.

1. Where a resident of New-Orleans, on the 28th of February, gave notice to the parish judge of St. Tammany, that he had changed his domicil to that parish since the 1st January past, but omitted to notify the parish judge of New-Orleans of his intention to change his domicil, and did not actually remove until service of citation on him the 9th of April following: *Held*, that he was properly sued at his legal domicil, and that the District Court sitting in the parish of New-Orleans had jurisdiction of the case.

Waller vs. *Lea*, 213

2. A change of domicil is produced by the *act of* residing in another parish, combined with the intention of making one's principal establishment there..... *ib.*

3. When several persons residing in different parishes contract a joint obligation, they must all be sued jointly and judgment rendered against each for his portion; but they may all be sued at the domicil of any one of them, which is an exception to the general rule; and they are considered as having waived their personal privilege of being sued at their own domicil.....*Toby & Co.* vs. *Hart et al.*, 523

4. The law of the domicil of a person inheriting property, will govern in relation to the rights of the inheritance.....*Hicks, administrator*, vs. *Pope* 554

PAGE.

5. So, where a slave is inherited by the wife from her father, who died in Alabama, and which if reduced to possession by her husband, domiciled there, would have become his absolute property; but the domicil of the husband and wife being in Louisiana at the time, every thing falling by inheritance to the wife, becomes her separate property..... *ib.*

DONATION.

1. In every thing relating to the contract of donation, the acceptor for the donee, who is a minor, is *functus officio* when he has accepted; and no written or explanatory act made by him afterwards, will have any effect in relation to the right of the donee....*Marie Louise, f. w. c.* vs. *Marot et al.* 475

EVICTION.

1. Where the evidence shows, that all the land on a certain water course, on which a tract of land claimed under a Spanish grant was located, from its source to its mouth, has been surveyed by order of the United States; and, although the tract claimed must have been passed over and embraced in the survey of the entire tract, yet, this does not amount to an eviction of the claimant so as to authorise him to recover back the purchase money from his vendor.....*Keene* vs. *Clark's heirs*, 114

2. The danger which a purchaser may apprehend of ultimate eviction, on account of minors being interested in the property sold, ought to have been considered before he bought and paid the price of adjudication. It will not authorise an injunction to restrain the owners from receiving the proceeds of the sale.....*Lameyer* vs. *Rouzan*, 280

EVIDENCE.

1. Parole evidence of a fact that should appear by entry on the minutes, and of record, is irregular and novel; but the objection will not be noticed on appeal, when it does not seem to have influenced the decision of the cause.....*Blanchard* vs. *Cole et al.*, 153

2. The treasurer's deed of conveyance to the purchaser of a tract of land sold for the state taxes, is insufficient evidence of title, without legal evidence of the original assessment of the taxes due.
Winter vs. *Thibodeaux's executors et al.*, 193

3. A judgment of the minor against his tutor when not attacked as fraudulent and collusive, is *primâ facie* evidence of the amount *due*, in an hypothecary action against the third possessor..... *ib.*

4. Where the note sued on and annexed to the petition, is described as bearing date in December, and the one offered in evidence according to the

PAGE.

report of experts shows the Roman numeral X was used instead of the word December: *Held*, to be properly admitted in evidence of the plaintiff's demand, notwithstanding the objection of the defendant on the ground of variance.....*Blanchard* vs. *Maurin*, 200

5. A *certified copy* of a deed or private act of sale, signed by the vendor and two witnesses, and recorded in the parish judge's office, is admissible and competent evidence to prove title to the property, when one of the subscribing witnessess swears the vendor told in his lifetime, that he had destroyed the original deed.....*Stanley* vs. *Addison et al.*, 207

6. Where the destruction of a deed is only proved by a single witness, who testified to the declarations of the vendor, that he had destroyed it in a drunken frolic: *Held*, that the proof is sufficient and legal, as the witness was not called on to prove a contract, but only to testify to a fact. Evidence of the confessions of the vendor, under whom the plaintiff claims in this case, is sufficient to prove the loss of the original deed..... *ib.*

7. Parole evidence, although inadmissable to prove title to immoveable property and slaves, or to destroy such title, yet, it is admissible to establish collateral facts connected with the transaction.....*Spencer* vs. *Sloo*, 290

8. Where it is alleged that an error to the prejudice of the maker of a negotiable note endorsed in blank, was made in calculating the amount for which it was given, parole evidence will be received to explain and correct the error, even if the note is in the hands of a third person who received it *in autre droit*, when he sustains no injury thereby.

Arcenaux vs. *Jourdan et al.*, 310

9. Parole testimony is admissible to prove that the lost bill of exchange sued on, was duly advertised, without the production of the advertisement, or the newspaper in which it was published.....*Miller* vs. *Webb*, 516

10. An act or instrument of writing purporting to be passed before a Spanish commandant, without the signatures of any witnesses, or mention of any in the body of the act, will not be received as evidence of a donation or marriage contract.....*Placentia's heirs* vs. *Placentia et al.*, 573

EXECUTION.

1. An execution cannot be quashed and set aside on the return of the sheriff, that the defendant has deposited the money in his hands, conditionally, to await the decision on an attachment of the debt, by the debtor himself, in a suit against the plaintiff in execution.

Richardson vs. *Gurney*, 255

PAGE.

EXECUTORY PROCESS.

1. Where the wife makes opposition and procures an injunction against proceedings in the *via executiva*, on the ground, that she has a prior claim and mortgage on the property seized; and the seizing creditor answers, and denies her claim and mortgage, and avers, she has made herself liable for his claims, by intermeddling in her husband's succession: *Held*, that the demand set up in the answer was reconventional, and not a proceeding in the *via ordinaria* as distinguished from the *via executiva*, and the court did not err in proceeding to inquire into the personal liability of the wife to pay the debt.....*Bank of Louisiana* vs. *Stansbury et al.*, 257

2. In a case where the creditor may resort to the executory process in another court from that which rendered judgment, in order to have it executed, no property can be seized and sold under the executory process, which could not have been taken under the judgment first rendered.
Canal Bank vs. *Copland*, 577

3. The sheriff is required to execute process issued on executory proceedings, in the same manner as in ordinary cases under *fieri facias*. *ib.*

GARNISHEES.

1. Garnishees cannot offer the papers of a suit, by a third person in evidence, to show the same property has been attached in their hands.
Blanchard vs. *Cole et al.*, 153

2. Garnishees cannot plead an open account, in compensation of the value of the debtor's property in their hands, at the time it is attached by a creditor..... *ib.*

3. Garnishees cannot set up a demand in compensation, against the defendant in the suit, which does not take place by the mere operation of law..... *ib.*

4. So, where the garnishees owed the defendants a balance for account of sales, and for property on hand, and set up a demand in compensation, for notes and interest due them as legatees of their deceased brother: *Held*, that this debt is not extinguished by compensation between them and the defendants, and the property and funds in their hands, must be considered as liable to the plaintiff's attachment against the defendants..... *ib.*

5. Garnishees cannot plead a demand against the defendant in attachment, in compensation by way of exception, to the right of the plaintiffs to recover..... *Ibid.*, 160

PAGE.

6. Garnishees cannot plead a demand in compensation by way of exception. It can only take place by operation of law.

Vairin & Reel vs. *Cole et al.*, 163

7. The plaintiff in attachment will recover from the Garnishees, whatever sum is shown to be in their hands, belonging to the defendant at the time the attachment is levied.....*Erskine et al.* vs. *Cole & Co. et al.*, 270

HEIRS.

1. Where a common ancestor was owner in his own right, of a tract of land before his second marriage, part of which he sold during his second marriage, for two thousand dollars, which was unpaid at the death of his second wife, and in the settlement of the community it was included in the mass, instead of being reserved as the sole property of the husband, but was partitioned among all the children: *Held*, that the child of the first marriage, in an action in the District Court, can compel the children of the second to collate and pay over the difference, so as to allow her a share, equal to one-half of the separate property of the common ancestor.

Benoit vs. *Benoit's heirs*, 228

2. The law contemplates perfect equality among co-heirs, and each one is to collate the advantages derived from the ancestor, to whose succession he is called..... *ib.*

3. An heir who was not a party to the proceedings in the Probate Court, in the settlement of a succession in which she is interested, and her rights compromitted, is not bound by them, and may maintain a separate action against her co-heirs, to recover her lost rights..... *ib.*

4. Minor heirs without acceptance must be considered as strangers to the succession, which is in itself vacant, and not represented by an heir; consequently the heirs are not entitled to citations, and notices in the proceedings by the creditors, to sell and distribute the property in payment of the debts.....*Poultney's Heirs* vs. *Cecil's Executor*, 321

5. After the time for deliberation has elapsed, an alienation fairly made by competent judicial authority, and for the payment of debts due by the deceased, and more especially mortgaged debts on the property alienated, will conclude the heirs who accept afterwards, with the benefit of inventory. *ib.*

6. It is a settled principle, that the retroactive effect of an acceptance, which is in truth but a fiction, should not be construed so as to extend and operate to the prejudice of the rights of third persons, previously acquired. *ib.*

7. It is only necessary to seek out and cite the heirs, in a proceeding to administer an estate *in concurso*, to ascertain if they will accept or renounce

PAGE.

the succession; and where the tutrix was present and renounced the community, and declined either accepting or renouncing for the minor heirs, whose rights were fully exercised by her, it was held that no other citation or notice to them was necessary. .....*Poultney's Heirs* vs. *Cecil's Executor*, 321

8. Money paid by a purchaser, for property bought at marshal's sale, which went to the payment of the debts of the owner, may be considered as benefiting his succession, even to the second inheritance; and the heir inheriting indirectly, or from the heir of the original owner, must refund on recovering this property, in proportion as he acquires from that succession.
Lafon vs. *White et al.*, 497

INJUNCTION.

1. Where the application to obtain an injunction was not legally made, yet when all the facts necessary to authorise it are manifest by matters of record, it may be granted.....*Campbell* vs. *His Creditors*, 71

2. So, admitting the facts necessary to support the application for an injunction, were not legally established when it was granted, on a motion to dissolve, if from an inspection of the record it is evident to the court the applicant would be entitled to a new one, in case the first is dissolved, it will be sustained..... *ib.*

3. Pending an action of nullity, the party may procure an injunction to prevent the judgment creditor from gaining any advantage by the alleged fraud in obtaining his judgment, in pursuance of the general authority to issue injunctions conferred by article 303 of the Code of Practice.
Garlick vs. *Reece*, 101

4. The defendant cannot enjoin a judgment to obtain credits for payments made before suit was brought, and for the purpose of partial relief, leaving the judgment to subsist as to the balance..... *ib.*

5. An injunction cannot issue to stay execution, on grounds which might have been pleaded in defence, before judgment..... *ib.*

6. An injunction will not be granted to stay execution on a judgment for damages, for causes which existed before the rendition of the judgment.
Peytavin vs. *Winter*, 271

7. So, where the plaintiff in execution had a judgment for damages sustained by him in consequence of the defendant obstructing the natural drain of waters from his front tract of land, by stopping certain ditches leading from it over the back land claimed by both parties, and the defendant afterwards obtains the title to the disputed premises, an injunction will not be allowed him to stay execution on the judgment for damages..... *ib.*

PAGE.

INSOLVENCY.

1. Property ceded of which the insolvent is not the absolute, but only the defeasible owner, and the sale of which is rescinded even after *cessio bonorum*, makes no part of the mass surrendered, and is not liable to any of the costs and charges of the cession.....*Mortee* vs. *Roache's Syndic*, 81

2. Where the meeting of creditors for the appointment of syndics, closed on the 9th of July, and an opposition was filed by a creditor on the 22d of the same month, to the appointment of one of the syndics, and alleging various grounds of error in the proceedings: *Held*, that *as ten entire days had expired in the interim*, after deducting Sundays, the opposition came too late.....*Goodale* vs. *His Creditors*, 125

3. It is required of creditors who oppose the appointment of syndics, on the ground of illegality in the proceedings, to file their opposition within ten days next following the appointment, counting from the day on which the proceedings closed before the notary..... *ib.*

4. The deliberations of creditors in the appointment of syndics become absolute without being homologated, after the lapse of ten days from that on which the deliberations closed before the notary, unless set aside by a timely opposition..... *ib.*

5. If the proceedings of creditors, in the appointment of syndics, are void upon their face, they can have no effect, and no formal opposition is necessary..... *ib.*

6. The law does not require that the *ten days* within which an opposition to the appointment of syndics must be filed, should be judicial days..... *ib.*

7. A debtor who is arrested and gives bail, is not considered in actual custody, so as to entitle him to the benefit of the act of 1808, for the relief of insolvent debtors in actual custody..... .....*Shultz* vs. *His Creditors*, 172

8. Opposition to the appointment of syndics by a creditor, must be made within the ten days next following the appointment before the notary. *Allen & Deblois* vs. *Their Creditors*, 221

9. So, where the tenth day following the appointment of syndics was Sunday, and the opposition of a creditor was filed on Monday, being the eleventh day thereafter: *Held*, that it was in time, because all judicial proceedings are forbidden on Sundays, and the party is entitled to his ten full legal days..... *ib.*

10. The claims of the hypothecary as well as chirographery creditors, constitute a part of the aggregate amount of passive debts of an insolvent,

PAGE.

and all together form the mass; a majority of three-fourths in number and amount of which is necessary to grant a forced respite.

Junin vs. *His Creditors*, 467

11. Creditors having a privilege or special mortgage on property of the insolvent, cannot be deprived of their right of seizure by a forced respite; but if this property is insufficient, they are restrained by the respite from proceeding against any other, for the balance unpaid..... ..... *ib.*

12. The insolvent debtor cannot avail himself of an error in the notice to his creditors, and have their proceedings set aside, on the ground that through mistake he convened them on too early a day..... *ib.*

13. Syndics who have funds arising from the sale of the insolvent's property, are bound to distribute them without delay.

Goodale vs. *His Creditors*, 290

14. Where there are higher or concurrent mortgages or privileges than that of the creditor to whom the mortgaged premises have been adjudicated, or where he is obliged to support a portion of the charges of the *cessio bonorum*, he cannot retain the price of the purchase in satisfaction of his privileged claim..... *ib.*

15. A creditor who has a special mortgage or the vendor's privilege on certain property surrendered by his debtor, and at the sale by the syndics bids for it and it is adjudicated to him, he cannot be required to pay the *price*, but may retain it in satisfaction of his claim, except so far as it exceeds his mortgage, on giving security to refund or meet any charges that may afterwards be legally ordered..... *ib.*

16. The action of the creditor to avoid the contracts of his debtor, made in fraud of his rights in cases of insolvency, is prescribed by one year from the *date* of his judgment.....*Zacharie* vs. *Buckman et al.*, 305

17. Where the evidence shows that the sale by the debtor to a creditor was made for the purpose of protecting the property against the pursuits of other creditors, the debtor being insolvent at the time, any one or all of the other creditors have an action to annul the sale as made in fraud of their rights..... *ib.*

18. But where a creditor takes a mortgage on the property of his debtor, even on the eve of insolvency, it will be binding as against the other creditors, unless the knowledge of the debtor's insolvency at the time is brought home to the mortgage creditor..... *ib.*

19. A ceding debtor who is a merchant or a bookseller and stationer, and keeps books of accounts, is bound to surrender and present to the judge all

PAGE.

his commercial books before the order is granted staying proceedings against him or his property, and calling a meeting of his creditors.

Boismare vs. *His Creditors*, 315

20. In cases of insolvency and bankruptcy, fraud is presumed against the insolvent, and courts of justice should act on this principle, when that presumption is supported by the evidence of facts which corroborate it..... *ib.*

21. So, where the insolvent made a cession of his property, and prayed for the benefit of the insolvent laws, but withheld his commercial books or books of account: *Held*, that he is thereby debarred from any benefits or privileges provided by the laws for the relief of insolvent debtors..... *ib.*

22. Where a respite has been previously granted to a debtor by his creditors, and he dies before the first instalment becomes due, according to the terms of the respite, his estate will be considered insolvent, and the debts all due and demandable, notwithstanding the respite, if the estate *is* accepted with the benefit of inventory:

Poultney's Heirs vs. *Cecil's Executor*, 321

23. According to the Spanish law, an estate not represented by an heir, might be provided with an administrator or curator at the instance of the creditors, with a view to administering it *in concurso*, for the benefit of all concerned..... *ib.*

24. Under the Civil Code of 1808, the District Court had jurisdiction *rationæ materiæ* of proceedings against vacant estates administered for the benefit of creditors, and could legally appoint administrators, curators or syndics, to administer and dispose of the property of such estate, for the benefit of all interested therein..... *ib.*

25. Syndics may consent to the terms of sale of mortgaged property, that it be sold on a credit and without appraisement; and such consent is binding on the heirs who afterwards claim the property, unless they show they were injured by it..... *ib.*

INSURANCE.

1. Where property shipped from New-Orleans to Liverpool is insured by the owners in London about the time of the shipment, and is soon after re-landed and stored, and insured by the factors in New-Orleans against fire, "for all whom it may concern," is destroyed by fire and the London office pays on the first policy: *Held*, that the latter cannot claim indemnity of the New-Orleans office unless it be a re-insurance, because the claimants have no insurable interest in the property destroyed. Their interest only extends to the risk insured against.

Alliance Marine Assurance Co. vs. *Louisiana State Insurance Co.*, 1

PAGE.

2. The contract of insurance although aleatory in its nature, is, nevertheless, synallagmatic and consensual in its inception and form, as containing the evidence of reciprocal obligations.

Alliance Marine Assurance Co. vs. *Louisiana State Insurance Co.* 1

3. To render a contract of insurance valid, the mutual consent of the parties is necessary. To support it requires proof of interest in the person acting and claiming, or those for whom he claims, or their sanction and ratification of his acts, and proof of the loss of the thing insured..... *ib.*

4. Factors have the power to insure for the principal owners, without special authority given; but, where factors insure property consigned to them "*for account of whom it may concern,*" and which has been already insured by the owners in another country, the first insurers cannot claim indemnity from the last, when there was no special authority given, or subsequent ratification of the insurance by the first insurers before the loss happened..... *ib.*

5. Underwriters claiming the benefit of re-insurance, must show a special authority given to an agent for that purpose an express contract to that effect, or an express sanction of the acts of an agent effecting a subsequent insurance on the same risk, before loss..... *ib.*

6. When acts of barratry of the master and mariners were committed by smuggling on board articles prohibited by the revenue laws, and which were seized on the landing of the vessel, but she is not seized until more than twenty-four hours after landing at her port of destination: *Held*, that the insurers were not liable for the barratry, although insured against, when according to the terms of the policy, the vessel was moored twenty-four hours in good safety, before seizure.

Mariatigui, Knight & Co. vs. *Louisiana Insurance Co.* 65

7. Although the loss of the vessel was the immediate consequence of the seizure, the remote cause of which was the barratry of the master and mariners, the effects of which were insured against, yet, as no loss resulted until after the vessel had been moored twenty-four hours *before seizure*, she may be considered as in safety *quo ad*, the responsibility assumed by the insurers..... *ib.*

8. Mooring in good safety is defined to be the placing a vessel in a situation to unload her cargo; no loss of the vessel prevented the landing of any goods on board, except those smuggled. It is the loss for which the insurers promised indemnity, which was neither inchoate nor final, by any proceeding directly touching the vessel prior to her being moored twenty-four hours in safety..... *ib.*

9. Where the plaintiff took out a policy of insurance against fire "on his goods, *stock in trade, &c:*" *Held*, that the policy covered goods in stores,

PAGE.

bought on joint account and sold for the mutual profit of the insured and another person, the former being also in advance on the adventure: *Held*, also, that the insured was absolute owner of one-half of the goods, and had an insurable interest in them "*as stock in trade*," and also to cover his advances on the whole stock.....*Millaudon* vs. *Atlantic Insurance Co.*, 557

INTEREST.

1. Banks cannot in any case take more interest than at the rate fixed by their charters. Where a bank charter fixes the rate at nine per centum, and ten is agreed upon, it will be reduced to the former sum.

Bank of Louisiana vs. *Stansbury et al.*, 257

2. Interest will not be allowed on an unliquidated demand, even when sanctioned by the verdict of a jury of merchants on a mercantile claim.

Beal vs. *M'Kiernan*, 569

JUDGMENT.

1. Where a writ of *fieri facias* issues on a judgment, and the sheriff seizes and sells the property of the debtor under it: *Held*, that the sale and receipt of the money by the sheriff, discharges the judgment, even when the money is stayed in his hands by injunction obtained on the claim of another creditor.....*Daboval* vs. *Escurix*, 96

2. So, if after seizure and sale of the debtor's property, the sheriff wastes and expends the money, or embezzles it and fails to pay it over to the creditor, the judgment will be discharged, and another seizure cannot be made..... *ib.*

3. A judgment in admiralty obtained by privileged creditors against a steam-boat, in which three-fourths of the owners, in interest, are parties, is not conclusive against the interests of the other fourth owner, which is attached in the state court, at the suit of a creditor of such owner. The claimants must make other proof of their claims before they can proceed against it.....*Hart* vs. *Lodwick*, 164

4. A judgment of the United States District Court, affirmed by the Supreme Court, which concludes in these words: "judgment must be given for the defendant, and the plaintiff's petition must be dismissed," will be considered as final, in favor of the defendant, and as *res judicata* in another action for the same demand.....*Keene* vs. *M'Donough*, 185

5. Where a final judgment of the Supreme Court of the United States is pleaded as *res judicata*, its correctness will not be inquired into by this court..... *ib.*

PAGE.

6. A judgment recovered by a minor against his tutor, when not attacked as fraudulent and collusive, is *primâ facie* evidence of the amount *due*, the payment of which is secured by legal mortgage, when offered against a third possessor of the mortgaged premises.

Winter vs. *Thibodeaux's Executors et al.*, 193

7. Where a judgment has been rendered against a principal debtor for a certain sum, and against the third possessor of the mortgaged premises, and the latter alone appeals, the appellee cannot have the judgment amended on the appeal, so as to increase the amount or affect the interests of the debtor.....*Crocker* vs. *Williamson et al.*, 216

8. Where a party obtains a judgment on a rule, in which he has mistaken his remedy, the judgment will be reversed and the rule discharged at his costs in both courts.....*Richardson* vs. *Gurney*, 255

9. Where a judgment which was rendered in another state, on a mortgage, according to the forms of proceeding there, and which liquidates the original debt which the mortgage was given to secure, is made the foundation of a suit here, for the balance which the mortgaged property failed to pay, and the debtor was not in the state, or served with process, nor appeared either in person or by attorney to the suit: *Held*, that such judgment is not evidence of the balance of the debt claimed; but that it is still open for a defence, on the merits of the original claim.....*Spencer* vs. *Sloo*, 290

10. Where a judgment was given against the maker and endorsers of a promissory note *in solido*, and it appearing the endorsers were not liable, for want of legal notice of protest for non-payment, and where the maker had no cause of appeal: *Held*, that judgment be affirmed as to the latter, with ten per cent. damages, as for a frivolous appeal; and reversed and judgment of non-suit entered in favor of the former.

New-Orleans Savings Bank vs. *Richards et al.*, 560

11. Where suit is instituted on notes and debts before they are due, judgment may well be rendered for as much of the debt as is actually due at the time of filing the answer.....*Millaudon* vs. *Foucher*, 588

JURISDICTION.

1. The Supreme Court has power commensurate with its appellate jurisdiction, but will not exercise a general supervisory control over the proceedings of the inferior tribunals. It can only interpose its authority when necessary for the exercise of its appellate jurisdiction.

State vs. *Judge Watts*, 76

2. A curator's bond is the evidence of a contract, on which a civil action may be instituted in the courts of ordinary jurisdiction.

Zander vs. *Pile et al.*, 211

PAGE.

3. The Court of Probates is one of limited jurisdiction, which cannot be extended to any case not especially placed within its attribution..
Zander vs. *Pile et al.*, 211

JURY.

1. Where it appears the jury were not influenced by the charge of the judge, but found their verdict in direct opposition to it, and on the grounds urged by the plaintiff, he cannot have the verdict set aside, because the charge was erroneous, and might have misled the jury.
Keene vs. *Lizardi et al.* 26

2. The court will not sanction the rule, that the jury must be guided in fixing the amount of damages, by the conduct of the wrong-doer, and the value or amount of his property, in an action against the owners of a vessel, for the wrongs of their captain or agent..... *ib.*

3. Where the whole matter is left to the jury, who under instructions from the court, of which the adverse party did not complain, find a verdict against them, and where even the evidence leaves the case doubtful, the verdict will not be disturbed.....*Thayer* vs. *Page et al.*, 135

4. The jury are the proper judges in cases turning on questions of fact, and particularly in reference to the value of property, when fraud and lesion are at issue. When there is nothing in the record to authorise it, the verdict will not be disturbed..... .....*Bertot et al.* vs. *Tanner*, 168

5. Where the evidence does not legally authorise the verdict of the jury, although it may have in reality been based on the intentions of the parties, it will be set aside and the cause remanded for a new trial.
Marie Louise, f. w. c., vs. *Marot et al.* 475

6. The law makes the verdict of the jury a distinct and essential document, connecting the judgment of the court with the anterior proceedings..... .....*Dubertrand* vs. *Laville*, 274

7. The verdict of the jury must be reduced to writing and signed by the foreman, with the mention of his capacity..... *ib.*

8. Where the verdict of the jury was reduced to writing and signed by the foreman in the French language, it was set aside as unconstitutional, and the cause remanded for a new trial..... *ib.*

9. It is not a sufficient compliance with the requisitions of the constitution that the verdict be recorded on the minutes of the court in the English language: it must be reduced to writing and signed by the foreman in that language..... *ib.*

10. The verdict of a jury in a case involving altogether matters of fact, will not be disturbed, although the testimony preponderates in favor of the

PAGE

other party, and is somewhat contradictory when the judge and jury who heard the witnesses were satisfied; and when the verdict is not so palpably erroneous as to require interference.....*Peters & Millard* vs. *Dorsey et al.*, 514

LAWS.

1. The repeal of general laws as regards their obligatory force in the administration of justice, ought not to destroy the force of principles which were established when they were in force, when these principles comport with natural justice as applied to the conduct of men.

Boismare vs. *His Creditors*, 315

LEGATEE.

1. Where a testatrix bequeathed certain specific legacies to her niece, and a moiety of all her moveable and immoveable property at her decease, instituting her niece a legatee by particular and general title, and the balance of her property she wills to the four children of her sister: *Held*, that both sets of legatees must be considered as claiming under universal titles, equal portions of the succession, and must both contribute equally to the payment of the particular legacies, debts and costs.

Aubry et al. vs. *Cajus, Executor, &c.*, 43

LESSOR AND LESSEE.

1. The lessor of a cotton press has no lien, privilege or pledge for the payment of his rent, on cotton sent there by third persons, and transiently stored with the lessee to be re-pressed.....*Rea* vs. *Burt et al.*, 509

MANDAMUS.

1. A *mandamus* will not issue to compel a judge to sign a judgment, after the lapse of three judicial days, when, even after that time, on the intervention of a creditor of one of the parties, suggesting fraud, the judge, in the exercise of his discretion, has granted a new trial.

State vs. *Judge Watts*, 76

2. Whether a judge discreetly exercises his legal discretion in granting a new trial, in any case, is a question which cannot be entertained on an application for a *mandamus* to compel him to sign the judgment upon which the new trial is granted; the error if it be one can only be corrected on appeal..... *ib.*

3. A *mandamus* will not be awarded to compel the judge of the inferior court to allow an appeal from an interlocutory order which refuses to the

PAGE.

defendant six months delay to procure papers and prepare his answer, when he can be relieved on an appeal from the final judgment, on showing that the judge erred in refusing him the delay asked for.

Gravier's Curator vs. *Caraby's Executor*, 202

MANDATE.

1. After the dissolution of a firm, neither partner can bind the other without his authority, and this authority is not to be derived from their former relations as partners, but by contract of mandate and letter of procuration.....*Peters & Millard et al.* vs. *Gardère, Syndic*, 565

2. Where the procuration to a partner from his co-partner is contained in the act of dissolution of the partnership, and authorises the mandatory to settle up and exhibit a balance sheet of their concern, it will not confer authority to represent the other partner and the firm *in concurso*, and vote for syndics on a claim of the partnership..... *ib.*

3. The appointment of a syndic is to constitute a new mandatory in relation to the debts due by the insolvent to the firm, and the procuration to vote for syndics must be express..... *ib.*

MARITAL AND DOTAL RIGHTS.

1. Where parties to a marriage contract do not stipulate and fix their rights by a matrimonial convention, they are considered as having left those rights to be regulated by such laws as may be enacted from time to time, during the continuance of the marriage: *Held*, also, that laws authorising the alienation of the dotal property of the wife, and giving her power to mortgage her property and bind herself *in solido* with her husband, are constitutional and may be applied to marriages or marriage contracts, entered into previously to their passage.

Pritchard et ux. vs. *Citizens' Bank*,. 130

2. Parties marrying in another state and removing to this, their rights concerning property they may afterwards acquire, are to be governed and regulated by the law of their domicil..... *ib.*

3. So, as to the rights of either spouse in the succession of the other, they will be tested, *not* by the law in force at the time of their marriage, but by that existing at the time the succession is opened..... *ib.*

4. The legislature has the power to remove or modify the legal incapacities of minors or married women, as may be deemed expedient. Incapacities and disabilities are creatures of the law, and may be at any time removed or modified by it *eadem modo*..... *ib.*

PAGE.

MATERIAL MEN.

1. Persons furnishing materials to the undertaker have no action against the proprietor, when they suffer the latter to pay off the undertaker to his agreement or contracts without instituting suit.....*Miller* vs. *Brigot et al.*, 533

2. The proprietor is not even obliged to accept a draft drawn on him by the undertaker in favor of the material man, for *part* of a payment which is to become due, nor to pay it then: he may pay the whole sum to the undertaker when it is due, or when he receives the work, unless suit is previously brought by the material man..... *ib.*

MINORS.

1. The general rule is, that the land and slaves belonging to minors cannot be sold for less than their appraised value. But the case of a citation provoked by a co-heir or co-proprietor, to effect a partition, is an exception, and puts minors on a legal footing with persons of full age. *Jacobs et al. vs. Lewis's Heirs*, 177.

2. The prohibition against alienating minors' property for less than its appraised value, does not extend to a case of a judgment against him, or of a citation made at the instance of a co-heir or other co-proprietor..... *ib.*

3. Under the *Civil Code* of 1808, *article* 15, *page* 454, minors had a legal mortgage on the property of their tutors, from the day of his appointment: *Held*, also, that land acquired during the tutorship, is subject to the mortgage of the minor.....*Winter* vs. *Thibodeaux's Executor et al.*, 193

4. The rules and forms prescribed for the alienation of minors' property, as such, viz: that it can only be sold in pursuance of the advice of a family meeting, and for its appraised value, do not apply to property alienated by judicial authority, at the instance of creditors, and for the payment of debts which formed a charge on the estate; because the sale of property in which minors were interested for the payment of debts, has always formed an exception to the rule.....*Poultney's Heirs* vs. *Cecil's Executor*, 321

5. Minor heirs, without acceptance, must be considered as strangers to the succession, which is in itself vacant and not represented by an heir; consequently the heirs are not entitled to citations and notices in the proceedings by the creditors, to sell and distribute the property, in payment of the debts..... *ib.*

6. So far as minors are prejudiced by the negligence or omissions of their tutors, and in the sale of their property as such, the title being fully vested in them, when it is made without all the formalities of law being complied with, they are entitled to restitution.....*Poultney's Heirs* vs. *Ogden*, 428

PAGE.

7. But, as regards the ordinary disposition and sale of the property of an estate in which the rights of minors are contingent and residuary, and which is subject to the claims of creditors, the acquired rights of third persons, resting on the faith of judicial proceedings, will not be disturbed, as the rules and forms for selling minors' property do not apply.

Poultney's Heirs vs. *Ogden*, 428.

NEW TRIAL.

1. Where the evidence does not legally authorise the verdict of the jury, although in reality based on the intentions of the parties, it will be set aside, and the cause remanded for a new trial.

Marie Louise, f. w. c. vs. *Marot et al.* 475

2. The Supreme Court will exercise the general power granted by law, and remand a cause for a trial *de novo*, when in its opinion justice requires it..... *ib.*

3. It is a general rule in remanding a cause for a new trial to be influenced alone by the pleadings, documents and evidence in the record; but in an action claiming the release of a person from slavery to liberty, every thing which may be properly done in *favorem libertatis*, should be done, even to notice facts *dehors* the record..... *ib.*

NOTICE.

1. When the endorser resides in a faubourg of New-Orleans, notice of protest addressed to him and deposited in the city post-office is insufficient, without showing reasonable diligence to give him personal notice.

Porter et al. vs. *Boyle et al.*, 170

2. Notice of protest for non-payment of a bill or note, must be given to the endorsers at the time, or they will not be liable; and this notice is required to be alleged and proved by other evidence than the instrument of protest.....*New-Orleans Savings Bank* vs. *Richards et al.*, 550

NOVATION.

1. The renewal of a note secured by mortgage, does not novate the original note and debt, so as to extinguish it and release the mortgage as its accessory, when a renewal is provided for in the mortgage, even if it be renewed in a different name, but proven to be the same debt.

Palfrey vs. *His Creditors*, 276

PARISH TREASURER.

1. The parish treasurer, although authorised to receive all moneys due to the parish, is not the proper person to sue and be sued in regard to parish claims.....*Helluin, Parish Treasurer* vs. *Maurin*, 111

PAGE.

2. A judgment rendered in a suit in which the parish treasurer is plaintiff, (if he be not expressly authorised) will not be *res judicata* against or in favor of the parish, in its corporate capacity.

Helluin, Parish Treasurer, vs. *Maurin*, 111.

3. The parish treasurer should be expressly authorised to institute suit, in order that the corporation be bound by whatever jugment is rendered in the case..... *ib.*

PARTITION.

1. So long as a partition, passed before the parish judge in his capacity of notary public, setting out the net amount of the estate, and the distributive share of each heir, and signed by each, remains in force or is not rescinded, an action of partition by an heir against his co-heirs to provoke a new partition, will not lie.....*Dufau et ux.* vs. *Latour et al.*, 552

2. The partition made by the notary must govern as to the share of each heir, and if any of them received more than their share at the sale of the estate an action will lie in favor of the other heirs to recover and equalize the shares in courts of ordinary jurisdiction..... *ib.*

3. Where the natural son, an illegitimate heir, is alleged to have received donations *inter vivos*, disguised in the form of sales, which are required by the legitimate heirs to be brought into partition, the Court of Probates has jurisdiction to inquire collaterally into the character of these sales, to ascertain if this property is to be included in the partition of the whole estate.....*M'Caleb et al.* vs. *M'Caleb*, 459

4. In an action of partition between forced heirs of the deceased mother and surviving father, a partition in nature must be effected, if practicable, before resorting to a sale.....*Placencia's Heirs* vs. *Placencia et al.*, 573

5. The surviving partner of the community has the right to have his half set off to him in nature, if it can be done..... *ib.*

PARTNERSHIP.

1. A partner may sue for and claim the dissolution, liquidation and settlement of the partnership concerns and recover whatever sums may be found due to him on such settlement, at the same time and in the same suit.

Millaudon vs. *Sylvestre et al.*, 262

2. Where the articles of partnership fix the rate of interest to be charged by either of the partners against the firm, at six per cent., and a partner renders an account for advances, and charges interest at ten per cent., which the other partners, conducting the establishment, receive and enter in their partnership books, it is written evidence of their assent to that rate of interest, and cannot afterwards be objected to..... *ib.*

PAGE.

3. Any one partner of a commercial firm has power to dispose of the personal property of the society for the use and benefit of the firm.
Hermann & Son vs. *Louisiana State Insurance Co.*, 285

4. The signature of one partner in matters of simple contract, relating to the partnership, will bind the firm..... *ib.*

5. So, where A brings a ship or vessel into partnership with B, at a certain valuation, and B takes out a policy of insurance on the vessel, and in his own name transfers to C, and the vessel is lost: *Held*, that C is entitled to receive the insurance money, in preference to the creditors of A, and who were such when he brought the vessel into the partnership..... *ib.*

6. After the dissolution of a firm, neither partner can bind the other without his authority, which must not be derived from their former relations as partners, but by the contract of mandate and letter of procuration.....*Peters & Millard et al.* vs. *Gardère, Syndic*, 565

7. Where the procuration to a partner from his co-partner is contained in the act of dissolution of the partnership and authorises the mandatory to settle up and exhibit a balance sheet of their concerns, it will not confer authority to represent the other partner and the firm in a *concurso* and vote for syndics on a claim of the partnership..... *ib.*

8. Admitting an act of procuration gave the power to a partner to represent a debt of the firm in a *concurso*, and vote for syndics; yet, when the other partner attended and voted, it will be viewed as a revocation of the delegated authority..... *ib.*

9. The appointment of a syndic is to constitute a new mandatory in relation to the particular debt due by the insolvent; and a partner must have expressly delegated his authority to another, to be deprived of the right of voting personally, so far as his own interest is concerned..... *ib.*

PETITORY ACTION.

1. In a petitory action when the last warrantor cited sets up no title, but pleads the general issue, the plaintiff may show by legal evidence that the former derives his title from the same common source, and is forbidden to attack it.....*Bedford* vs. *Urquhart et al.*, 234

2. In this action the plaintiff is entitled to the use of any legal evidence or means by which he may render valid the title offered in support of his claim..... *ib.*

3. Parties litigating in respect to their several and separate rights to certain property and trace their titles to one common source, are neither of them permitted to deny the title of their common author or original vendor. *ib.*

PAGE.

4. When the pleadings and evidence of the case show, that the plaintiff, defendant and warrantors, all claim under one common and original title, neither will be permitted to attack it in a petitory action.

Bedford vs. *Urquhart et al.* 234.

5. In a petitory action, it is not necessary that the plaintiff should show title in himself good against the whole world and perfect, in order to recover against a naked possessor.....*ibid.*, 241

6. The plaintiff in a petitory action is bound to produce a title as owner *causa idonea ad transferendum dominium*, to repel the presumption of ownership resulting from mere possession, and the date of his title ought to be anterior to the possession of the defendant..... *ib.*

7. As a general rule, an action of revendication can only be maintained by the owner; yet it may sometimes be sustained by one who is not the real owner, but was in the way of becoming so when he lost the possession. *ib.*

8. So, he who possessed in good faith under a just title, and lost the possession before the period required for prescription, can recover it in a petitory action from one who is in possession without title..... *ib.*

9. In a petitory action, the presumption of ownership resulting from mere possession, will be repelled by exibiting such a title on the part of the plaintiff as would have formed the basis of the ten years' prescription, if the possession under it had continued, together with evidence of possession in virtue of such title, anterior to the commencement of the defendant's possession, and would otherwise authorise a judgment restoring him to possession as owner..... *ib.*

10. In a petitory action, persons (as heirs) claiming the estate, are bound to make good their title against the legal possessor, and in opposition, the latter has the right to set up and prove by every legal means, any title which may defeat the claim of the plaintiffs.

Poultney's Heirs vs. *Cecil's executor*, 321

PLEDGE.

1. An act of pledge of bank stock to secure the payment of a specified note to the bank, and "for the payment of any other note or obligation which may be due or become due to said bank by the pledgors," will not be construed to extend to notes drawn to the order of another person and held by the bank, although one of them was due and protested at the time the plegde was given, but not mentioned in it.

Syndics of Yard & Blois vs. *Mechanics' & Traders' Bank*, 480

2. As regards the creditors of the pledgor, an act of pledge is not valid beyond the amount of the notes or debts specifically mentioned in the act. *ib.*

PAGE.

PRACTICE.

1. A cause will not be remanded for errors on the trial, which could have no effect on the merits, or have influence in the case.

Keene vs. *Lizardi et al.*, 26

2. A statement of facts made out by the judge, will be deemed sufficient to enable the court to examine the case on its merits, when there is no other objection than the refusal of the appellees to consent to it.

Robertson et al. vs. *Penn*, 61

3. Where a mortgage debtor offers certain receipts as evidence of payments made to the original mortgagee before assignment, but which bear date more than a year before any payments were due, and he is interrogated on oath by the transferee of the claim, to say whether the receipts were not given for money won at play? and if not, what was the consideration? *Held*, that the party cannot be dispensed by the court from answering; and that the character of the receipts, and the circumstances under which they were given, should be inquired into.

Maillan vs. *Perron et ux.*, 138

4. Where an account current has been rendered to a party, and received and entered on his books without objection, he cannot afterwards object to it, on the ground that it contains overcharges or compound interest.

Millaudon vs. *Sylvestre & Son et al.*, 262

5. Courts of justice will not interfere in the contracts or transactions of men, to redress or prevent imaginary wrongs, or such evils as are very remotely probable, or barely possible in their occurrence.

Lameyer vs. *Rouzan*, 280

6. When a resolution adopted by the stockholders of a corporation, ratifying certain sales of the corporation property, is produced, the officers of the corporation who urge the invalidity of the ratification, on the ground that the meeting was illegally called, must show such illegality, and support their allegations by proof.....*Dunn* vs. *New-Orleans Building Co.*, 483

7. Where a juror is discharged and another one substituted and sworn in his place, after the trial has commenced, and part of the evidence introduced, the plaintiff has the right to open his case again to the jury, and the trial to proceed *de novo*... .....*Follin* vs. *Foucher et al.*, 563

8. The exception to the prematurity of a suit, is a dilatory one, and must be pleaded *in limine litis*.....*Millaudon* vs. *Foucher*, 587

PRESCRIPTION.

1. An acknowledgment and promise by the debtor, that a debt is just and he will pay it on a contingency, which soon after happens, is a sufficient

PAGE.

promise and assumsit to interrupt prescription after it is complete, and bind the promissor in a new obligation to pay.....*Lafourcade* vs. *Barran*, 283

PRIVILEGES AND MORTGAGES.

1. The creditor who proceeds against the property of his debtor by provisional seizure and sequestration, acquires no privilege thereon until he has obtained a judgment, and execution issues on it.

Eymar vs. *Lawrence et al.*, 38

2. The privilege of the captain of a vessel for his services, advances made and expenses paid on her last voyage, does not extend to the insurance money received as indemnity on her bottom, paid by the underwriters, when she is destroyed or lost by the perils of the sea..... *ib.*

3. In a voluntary sale of a ship, the creditor can pursue it and exercise his privilege on it, in the hands of the vendee; and in forced sales, the privilege attaches to the *price*, and the purchaser takes the vessel free of incumbrance; but when the ship is lost or perishes by the perils of the sea, the privilege is lost with her..... *ib.*

4. When goods are lost at sea, which are insured, they are not represented by the sum or insurance money received from the underwriters, and the vendor's privilege does not extend thereto..... *ib.*

5. Creditors for supplies of ship chandlery, &c., furnished a vessel on her departure, loose their privilege on the vessel or her proceeds, for amount of such supplies, if they suffer her to depart on a second voyage before enforcing their privileged claim.....*Abat* vs. *Nartigue et al.*, 188

6. Where the payment of a note, executed by a commercial firm, is secured by a mortgage which stipulates to secure the endorsee, not only on the original note but for any renewals that may take place, and the renewal is made in the individual name of the liquidator of the firm: *Held*, that the debt is not novated nor the mortgage released, but that the transferee and endorsee of the mortgage and note, can recover and enforce payment against the mortgaged premises.....*Palfrey* vs. *His Creditors*, 276

7. A creditor who has a special mortgage or the vendor's privilege on certain property surrendered by his debtor, and at the sale by the syndics bids for it and it is adjudicated to him, he cannot be required to pay the *price* of his bid, but may retain it in satisfaction of his claim, except the surplus, on his giving security to refund or meet any legal charge afterwards.....*Goodale* vs. *His Creditors*, 299

8. Mortgage creditors are authorised to resist any attempt to sell the mortgaged property, otherwise than for the immediate payment of the mortgaged debts..... *ib.*

PAGE.

9. The proceeds of the sale of mortgaged property remains subject to the same rights and privileges which the creditor had on it before the sale.
Goodale vs. His Creditors, 299

10. Mortgagees are not prohibited from bidding for, and purchasing the mortgaged premises, when sold under execution.
Poultney's Heirs vs. *Cecil's Executor*, 321

11. The landlord or lessor of a cotton press has no privilege, lien or pledge for the payment of his rent on cotton sent there by third persons, and transiently stored with the lessee, to be re-pressed.....*Rea* vs. *Burt et al.*, 509

12. Where a mortgage was given to secure endorsements to a certain specified amount, which are soon afterwards made, and it is proved that new notes are taken in renewal of the original ones, with the same endorsements: *Held*, that the endorser can claim the benefit of the mortgage, to secure the payment of the new notes, over ordinary creditors.
Ory vs. *His Creditors*, 529

RULE TO SHOW CAUSE.

1. In an action on a promissory note which is claimed by an intervening party, and when there is a defence set up or off-set pleaded to the merits, so as to show the matter in contestation is not liquidated, the court cannot, on a rule to show cause, require the defendant to pay the amount of the note sued on into court.....*Terrell et al.* vs. *Babcock, Gardiner & Co. et al.*, 23

2. When the creditor and debtor are at issue on the amount of a demand, either party is entitled to a trial, by jury or the court, and another creditor or claimant of the money, cannot require it to be paid into court, on a rule to show cause, before final judgment..... *ib.*

SALE.

1. Where the purchaser at the time of the sale has knowledge that his vendor's title arises from a simulated sale to him, or that the sale is rescinded since, as between the latter and his vendor, the plaintiff or last purchaser's situation is no better than the seller to him.
Wells vs. *Walker et al.*, 14

2. The principle is established and settled, that the first vendor has a right to avail himself of a counter letter in a simulated sale and recover back his property. His case is more favorable in relation to the person who purchased from his vendee when he is defendant and in possession..... *ib.*

3. A sale of immoveable property followed by tradition by a person styling himself attorney in fact of the vendor, whose power of attorney is

PAGE.

not produced, is only defective for want of the evidence of his authority and not a nullity of form resulting from his legal incapacity.

Bedford vs. *Urquhart et al.* 241

4. The sheriff's deed and return upon the execution and judgment, furnish *primâ facie* evidence of a valid alienation; and he who attacks it must show that the forms of law have *not* been complied with.

Poultney's Heirs vs. *Cecil's executor*, 321

5. Where sales of property under execution are regular, the rights of purchasers will be maintained, although the judgment is afterwards reversed for want of jurisdiction in the court by which it was rendered..... .... *ib.*

6. If from the tacit admissions of a vendor, that he had acquired no title to a certain slave in his possession from the true owner, but, that the sale to him was simulated, and permits a creditor of his vendor to seize and sell the slave in contest at public sale, the purchaser will acquire a valid title thereto, without any suit to set aside the first sale..*Harris* vs. *Denison et al.* 543

SEIZURE AND SALE.

1. Where the transferor of a mortgage by private act, afterwards goes before a notary public and two witnesses with a copy of the act of transfer, and acknowledges that the act of which that is a copy, was his proper act, with his signature affixed to the original: *Held*, that on presenting this instrument together with a copy of the act of mortgage, the transferee is entitled to an order of seizure and sale.....*Maillan* vs. *Perron et ux.*, 138

SIMULATION.

1. In an action by a vendee against the vendors of his vendor, who are in possession and claim the contested premises as the original owners, alleging that the sale by them to the plaintiff's vendor was simulated and had been reconveyed as appeared by two counter letters: *Held*, that the question was whether the plaintiff knew at the time he purchased, of the defects of the seller's title and that it was simulated or had been rescinded.

Wells vs. *Walker et al.*, 14

2. The question of the buyer's knowledge of the defects in his vendor's title as that the latter held the property by a simulated sale, is one of fact which the jury has a right to decide from all the circumstances of the case. *ib*

3. Where the purchaser at the time of the sale has knowledge that his vendor's title is simulated or rescinded, as between the latter and his vendors, the plaintiff's situation is no better than the seller to him..... *ib*

PAGE.

3. The first vendor can avail himself of a counter letter in a simulated sale and recover back his property. His case is more favorable in relation to the person who purchased from his vendee, when he is defendant and in possession.....*Wells* vs. *Walker et al.*, 14

STOCK COMPANIES.

1. Where a stockholder sells his stock, subscribed in his name to another, and the institution or company does no act releasing him from his obligation, he will be bound to pay up the instalments, as called for by the directors.....*Louisiana Insurance Company* vs. *Gordon et al.*, 174

TUTOR.

1. A distinction or difference necessarily exists between the office of a testamentary executor or administrator of an inheritance or succession, and that of a tutor or guardian. The former deriving their authority in another state or foreign country, cannot exercise their office here until they obtain authority from the competent tribunal, (Court of Probates) to execute the will, or administer the property of the succession in this state.

Chiapella vs. *Couprey et al.*, 84

2. A tutor regularly appointed in another state or foreign country, his authority to sue for, receive and take possession of the property of his pupil in this state, will be recognised here without confirmation by any of the tribunals in this state..... *ib.*

3. So, a tutor residing in another state or foreign country, and regularly appointed by the law of his domicil, may exercise his office by an agent or attorney in fact, as regards receiving and recovering the property of the minor in this state..... *ib.*

VACANT ESTATE.

1. According to the Civil Code of 1808, no one could be compelled to accept a succession and assume the quality of heir; and having accepted, might renounce and even accept again in some instances. Until such acceptance or renunciation, the inheritance was a fictitious being representing in every thing the deceased. Before acceptance, the title of the heir is not vested. So, where the widow renounces the community, and no person claimed as heir for thirteen years, the *estate* was considered and held to be *vacant*. *Civil Code of* 1808, *article* 112, *page* 172.

Poultney's Heirs vs. *Cecil's Executor*, 321

PAGE.

VENDOR AND VENDEE.

1. A vendee only incurs in ordinary cases, the obligation to pay the price; and when that is acknowledged in the act to have been paid and received by the vendor, the signature of the vendee is not necessary to bind him or to show that he assented to the sale. His assent may be proved *aliunde*.....*Stanley* vs. *Addison et al.*, 207

2. Purchasers of property, who collude with the vendor in the sale of it, with the view to defraud the true owner, cannot avail themselves of the omission to record the act of partnership under which the property is claimed by the owner.....*Millaudon* vs. *Sylvestre & Son et al.*, 262

3. The first purchaser cannot repudiate the title by which he has sold to his vendee; and the averment in a petition by him that the proceedings were null under which the title was first acquired, cannot avail third persons who were not parties to them.....*Poultney's Heirs* vs. *Cecil's Ex'r.*, 321

4. The last purchaser of a plantation and slaves may pay off previously existing debts, due by his vendors on the premises and for which they are liable; and be subrogated to the rights of these creditors, against his immediate vendor, and compensate such payments against the instalments as they become due.....*Mitchell* vs. *Johnson*, 525

VERDICT.—SEE JURY.

WAGES.

1. Where the plaintiff claims from the executor of his uncle's estate, a large sum for his services as clerk and book-keeper, at a stated annual salary for the time he served, and there is no proof of any contract or agreement to pay a salary or wages at any particular rate per annum; and where that assumed by the plaintiff, clearly appears by his own interpolation in the books of his employer: *Held*, that he cannot recover in such a case, having depended on the generosity of his relation, for remuneration.

Tilghman vs. *Lewis's Estate*, 105

2. So, the plaintiff cannot recover, as on a *quantum meruit*, when he sues for wages on an agreement for an annual salary or hire, and when the evidence shows he served under no contract, expressed or implied, but depended on the beneficence of his employer, who was his relation; and when it is also shown, he improperly interpolated a feigned contract for wages, in the books he was employed to keep..... *ib.*

PAGE.

WARRANTY.

1. Where a defendant is sued on his note, and alleges error, that the amount and consideration for which it was given was paid to another person who was to save him harmless, and whom he calls in warranty: *Held*, that it is not such a case of simple or personal warranty as authorises a delay for calling in the warrantor.....*Anselm* vs. *Wilson*, 35

WILL.

1. The intentions of the testator as expressed in the will should be carried into effect. But this instrument should be so construed, if possible, as to give meaning and effect to every clause, phrase and word. If contradictory phrases and expressions are used, so absolute in their different meanings as to be irreconcilable, one or the other must yield.

Aubry et al. vs. *Cajus, Executor, &c.*, 43

2. Where it is admitted by both parties that certain dispositions and provisions in a will are illegal and afford sufficient grounds to annul it, no other defects or alleged grounds of nullity will be decided on or noticed.

Bernard's Heirs vs. *Durocher et al.*, 232

3. As a general rule, in all testamentary dispositions of property, or dispositions *causa mortis*, the words *estate* and *succession* are to be taken and construed as synonymous.....*Shane & Withers* vs. *Withers's Legatees*, 489

4. Where a testator wills to his wife and two sisters, each one-third part of his whole estate, having no forced heirs, they will be considered as universal legatees, succeeding to the whole of the estate of which he died possessed, to the exclusion of all others. ..... *ib.*

5. Universal legatees having seizin of the estate under the will, hold the place of heirs instituted by testament..... *ib.*

6. Where a testator (having two daughters, only heirs) bequeaths one-fifth of all his property to one, and directs the balance to be equally divided between the two daughters, his heirs instituted under his will, the first will be entitled to three-fifths and the second to two-fifths of the whole succession. The first is considered as taking an *increased* portion, rather than a legacy for one-fifth.....*Lafon* vs. *White et al.*, 497

WITNESS.

1. The original holder of a note, who had with other creditors executed a release of the debtor, under an assignment of his property, is a competent witness to testify in a suit brought against the maker of the note by another person, who afterwards gets possession of the note unfairly.

Morrison vs. *French*, 118